Proposed Amendments for 1998 to the Municipal Government Act

Alberta
Municipal Affairs

ALBERTA
MUNICIPAL AFFAIRS

Office of the Minister
MLA, Sherwood Park

September 1997

The Municipal Government Act is the principal legislation guiding the operation of local government in Alberta. In view of this key role, the Act must be responsive to the changing needs of Alberta municipalities if Albertans are to continue receiving the best possible service from the level of government closest to them.

I am pleased to present a set of proposed amendments to the Municipal Government Act for possible introduction during the Spring 1998 session of the Legislative Assembly of Alberta. These proposals are intended to address the concerns raised by various stakeholders.

Your views on the proposed amendments and options are important to me. Any ideas or opinions you may have about other possible changes to the Act are also welcomed. Please send or fax your comments by **October 17, 1997**, to:

Boyd Oberhoffner
Director
Legislation and Planning Projects
Local Government Development Branch
Alberta Municipal Affairs
17th Floor, Commerce Place
10155 - 102 Street
Edmonton, Alberta T5J 4L4

[Fax: 420-1016]

Iris Evans

424 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 Telephone 403/427-3744, Fax 403/422-9550

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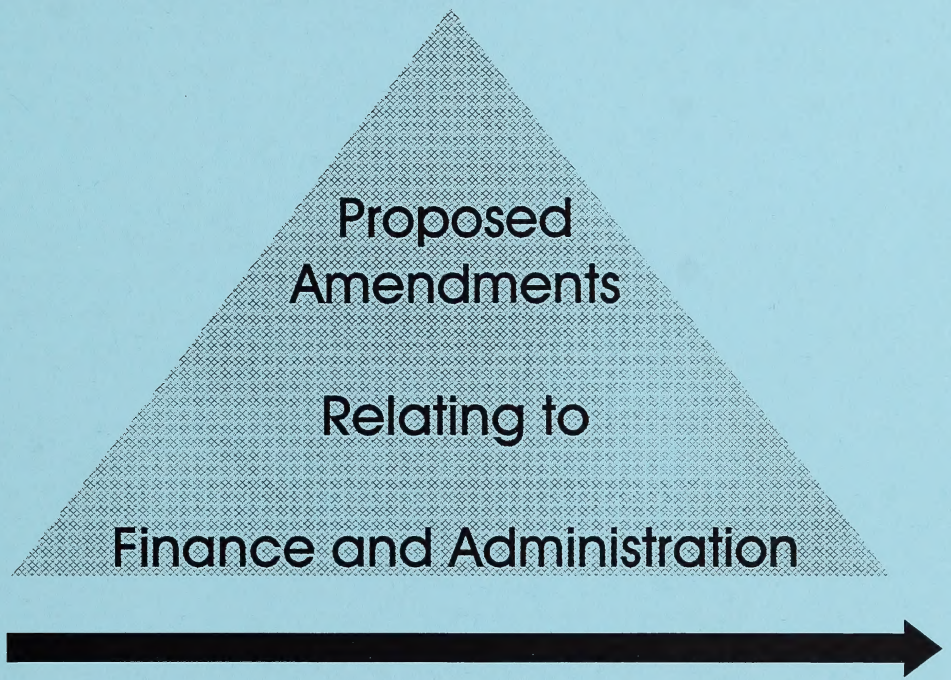
Proposed
Amendments
Relating to
Finance and Administration

1 Dissolution Orders - Imposition of Additional Taxes

Cabinet dissolution orders often include provisions related to assessment and taxation. The orders can include the imposition of an additional tax by the new municipal authority to pay for excess liabilities associated with the dissolved municipality and to meet the borrowing obligations of the dissolved municipality.

The *Municipal Government Act (MGA),* however, also assigns the responsibility for the imposition of such an additional tax to the Minister. There appears to be an overlap in the authority provisions relating to the imposition of additional taxes in the case of dissolutions. Legislative Counsel recommends that the authority should be either with the Lieutenant Governor in Council or the Minister, but not both.

It is proposed that sections 134 and 135(4) be amended to allow the Lieutenant Governor in Council, in a dissolution order, to authorize the successor of a dissolved municipality to:

a) impose an additional tax to pay for excess liabilities associated with the dissolved municipality, or
b) to impose an additional tax to meet the borrowing obligations of the dissolved municipality.

2 Time Extension for By-elections

When there is a vacancy on a council or the position of chief elected official becomes vacant, a by-election must be held within 90 days unless the vacancy occurs within a specified time before a general election. However, the time requirements for holding a by-election may be changed by Ministerial Order.

On two occasions during the present council term, an absence of nominations has prevented a municipality from holding a by-election. The municipality has requested a Ministerial Order delaying the by-election to the next general election and adjusting the quorum for the balance of the present term. Without an amendment, an extension of the period for holding a by-election would be inconsistent with the intent of the *MGA* that by-elections should be held except under very specific circumstances.

It is proposed that section 165 be amended to state that if a by-election is not held within 90 days of a vacancy occurring, the Minister may by order:

a) ***set another date for the by-election;***
b) ***extend the time to the next general election;***
c) ***reduce the quorum for council; and***
d) ***take any other action the Minister considers necessary.***

The proposed amendment would add flexibility to the requirements which govern the filling of vacancies while preventing possible abuse of the intent of the legislation.

This issue was raised by the Local Government Advisory Branch of Municipal Affairs

3 *Relationship Between Council and the Chief Administrative Officer*

The legislation specifies council's role with respect to policy and the chief administrative officer's (CAO) role with respect to administration. Concerns have been raised regarding the distinction between the role of council and that of the CAO.

It is proposed that section 207 be amended to require an annual documented performance evaluation of the CAO by council with respect to implementing council policy and providing administrative leadership.

It is also proposed that section 208 be amended to allow the CAO to advise council on the legislative responsibility of the actions or decisions that it proposes to take, and to require that the advice be recorded in the minutes.

4 *Categorizing Five Year Borrowings as Short Term*

The *MGA* outlines the conditions under which municipalities may undertake a capital borrowing. Borrowing is defined as either short term (less than five years) or long term (more than five years). However, the *MGA* does not refer to a term of exactly five years.

Capital borrowings or leases of exactly five years are treated differently by each municipality. For example, capital borrowings or leases not exceeding five years do not require the borrowing bylaw to be advertised.

It is proposed that sections 241 and 257 be amended to include a term of exactly five years and that it be categorized as short term.

This issue was raised by Financial Advisory Services of Municipal Affairs.

5 Short Term Borrowing Limit

The *MGA* places a limit on the amount of borrowing to finance a capital property for a term not exceeding five years. The limit is 30 percent of the amount that the municipality expects to raise in taxes in the year the borrowing is made. Some municipalities have complained that the 30 percent limit is unclear since it does not specify whether education requisitions, for example, are included in the 30 percent calculation. There is also some question regarding how the 30 percent was derived.

The *Debt Limit Regulation (Alberta Regulation 375/94),* which came into effect January 1, 1995, provides an overall limit on municipal borrowing. Therefore, the continued need for the 30 percent limit in section 257 is questionable.

It is proposed that section 257(3) be deleted in favour of relying on the Debt Limit Regulation to monitor municipal borrowing.

This issue was raised by Financial Advisory Services of Municipal Affairs.

6 Repeal Restrictions on Loans and Guarantees

The *MGA* places a limit on the amount a municipality can guarantee as a loan between a lender and a non-profit organization. The limit is 30 percent of the expected tax revenue that will be raised in the year the loan or guarantee is made.

The *Debt Limit Regulation* effectively places an overall limit on municipal borrowing. Loans and guarantees to non-profit organizations are already factored into the *Debt Limit Regulation.* If a municipality lends money to a non-

profit organization, the amount of the loan is reduced from revenue before calculating the debt limit. In addition, any loan guarantees made by the municipality are added to the municipal debt when comparing the actual debt levels to the debt limit. Therefore, the continued need for a 30 percent limit is questionable.

It is proposed that section 267(3) be deleted in favour of relying on the Debt Limit Regulation.

This issue was raised by Financial Advisory Services of Municipal Affairs.

7 *Municipal Subsidiaries*

The *MGA* is unclear as to whether a municipal subsidiary should be treated as a municipal utility or a non-municipal utility. Municipal public utilities are not subject to the *Public Utilities Board (PUB) Act* except on a complaint basis or if the municipality passes a bylaw to bring the utility under the *PUB Act*. Non-municipal utilities are subject to the *PUB Act*.

The Province enacted the *Aqualta Inc. Regulation (Alberta Regulation 120/97)* in June 1997, which specifically removed Aqualta, a wholly owned subsidiary of Epcor, which is itself a municipal corporation of the City of Edmonton, from the PUB's jurisdiction within the City of Edmonton. As a result, the City continues to set the water rates for Edmonton residents while the PUB sets the rates for the regional customers of Aqualta. The *Regulation* was passed under section 603 of the *MGA* and, as such, expires in two years from the date of filing unless the *MGA* is amended prior to that time to include the substance of the *Regulation*.

It is proposed to add provisions in Part 3, Division 3, to reflect the following:

a) ***sections 43 to 47 would apply in respect of a utility service provided by Aqualta;***
b) ***the jurisdiction of the PUB would not apply in the case of a utility service, owned or operated by Aqualta and provided within the boundaries of the City of Edmonton; and***
c) ***any dispute between a regional services commission and Aqualta with respect to rates, tolls or charges for a service that is a public utility, compensation for a facility acquired by the commission that is used to provide a public utility, or the commission's use of any road,***

square, bridge, subway or watercourse to provide a public utility, can be submitted to the PUB.

8 Third Party Maintenance Agreements for Ex-Forestry Roads

Alberta Transportation and Utilities (AT&U) intends to repeal all of its forestry road regulations within the next year. AT&U currently has a number of agreements with resource companies, under which the latter agree to bear the cost of maintaining forestry roads. One such maintenance agreement expires on September 30, 1997.

When the regulations are repealed and the Forestry Road agreements expire, responsibility for the administration and maintenance of the roads will devolve to the municipalities pursuant to section 18 of the *MGA*, which states that "subject to this or any other Act, a municipality has the direction, control and management of all roads within the municipality."

The *MGA* does not, however, allow municipalities to enter into forestry road maintenance agreements with third parties. Since forestry roads are not defined in the *MGA*, it is open to question as to whether these roads are public or private.

A regulation was prepared under section 603 to allow two municipal districts to enter into a maintenance agreement with a resource company regarding a forestry road. Since the proposed regulation would expire in two years, its provisions would need to be included in the *MGA*.

It is proposed that provisions be added to Part 3, Division 2, to reflect the following:

a) to allow municipalities to enter into agreements with third parties regarding the commercial or industrial use of a road that is or was designated as a forestry road;

b) the agreement could require the third party to maintain the road to standards specified in the agreement;

c) the agreement would not prohibit a person from using the road for purposes other than for commercial or industrial purposes, but may authorize the third party to allow others to use the road for commercial and industrial purposes and to charge others for such use;

d) disputes regarding the agreement would be referred to the Minister of Municipal Affairs; and

e) unauthorized use of the road would result in a contravention and subject to a penalty based on a proportion of the agreement holder's cost of maintaining the road including capital improvements.

9 Setting Taxi Tariffs

The former *MGA* provided municipal councils with the specific statutory authority to regulate taxis and set taxi tariffs. However, the new *MGA* grants general rather than specific powers. Some municipal councils have set tariffs by using the general power to pass by-laws for municipal purposes respecting transport and transportation systems (section 7(d) of the *MGA*).

A complaint that taxi fares were being fixed resulted in the Competition Bureau (Industry Canada) reviewing the regulatory arrangement that governs taxis in Alberta. The *Federal Competition Act* prohibits price fixing, except where there is specific statutory authority to regulate activities and to set tariffs. In the view of the federal Competition Bureau, the general powers of the *MGA* are not specific enough to support a defence of the legislation and therefore a municipality's authority to set taxi tariffs could be challenged.

It is proposed that a new section be added to prohibit a council from passing a bylaw that establishes fees which a business may charge, with the only exception being the establishment of fees related to the hire of taxis and limousines.

The proposed amendment would only affect those municipalities that are currently setting taxi tariffs.

Proposed Amendments for 1998 to the Municipal Government Act
Comments Relating to Finance and Administration

Respondent: _____

Representing: _____

1 Dissolution Orders - Imposition of Additional Taxes

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2 Time Extensions for By-elections

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3 Relationship Between Council and the Chief Administrative Officer

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4 Categorizing Five Year Borrowings as Short Term

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5 Short Term Borrowing Limit

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7 Municipal Subsidiaries

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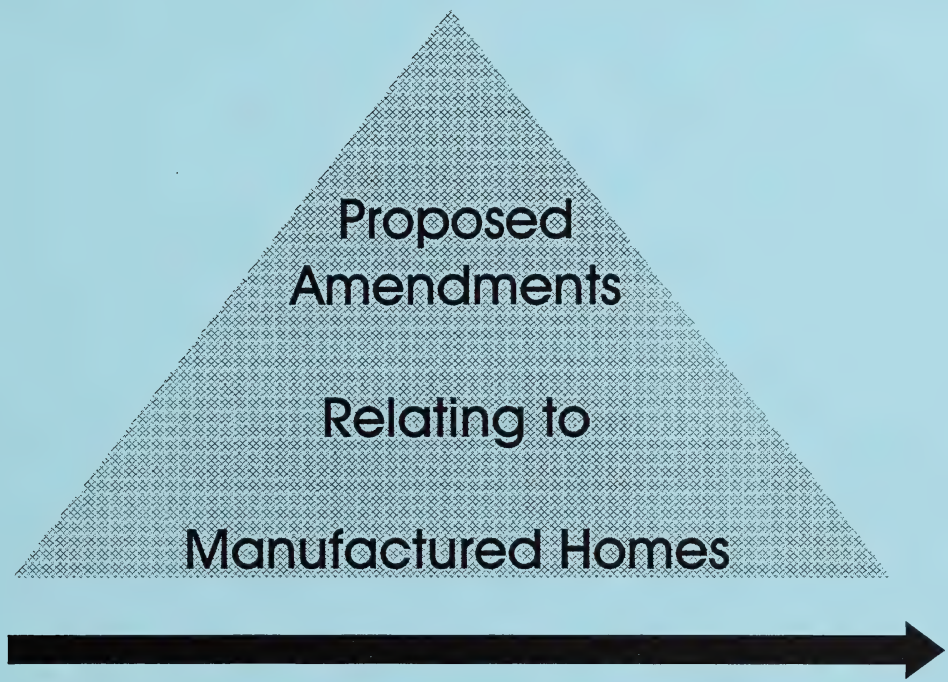
Proposed
Amendments
Relating to
Manufactured Homes

10 Terminology Change

Considerable consultation has taken place with respect to the review of the *MGA* provisions regarding mobile units (manufactured homes). The Manufactured Housing Committee, with representatives from the Alberta Urban Municipalities Association, the Alberta Association of Municipal Districts and Counties, the Manufactured Housing Association of Alberta and Saskatchewan, and Alberta Municipal Affairs, prepared a consultation paper that was forwarded to many stakeholders.

The Committee supported a request by the Manufactured Housing Association to replace the term "mobile unit" with "manufactured home" wherever it appears in the Act.

It is proposed that all references in the MGA to the terms "mobile unit" and "mobile home park" be replaced by the terms "manufactured home" and "manufactured home community" respectively.

11 Tax Recovery Process

The Manufactured Housing Committee has recently completed a review of, and published a series of recommendations relating to, mobile units (manufactured homes) in Alberta. The following four recommendations from the Committee are based on that consultation process:

A. Tax Recovery Process

Currently, the provisions in the *MGA* relating to tax recovery on mobile units (manufactured homes) are cumbersome to administer.

It is proposed that provisions regarding tax recovery on mobile units (manufactured homes), similar to those relating to land, be included in the Act.

B. Reporting Requirements

A number of municipalities have requested that a reporting requirement be included in the *MGA*, requiring owners of mobile home parks (manufactured

home communities) to provide timely information on the ownership and movement of such homes.

It is proposed that new provisions be added to the MGA to enable a municipality to pass a bylaw requiring all mobile home park (manufactured home community) owners in the municipality to report on the ownership and movement of all mobile homes (manufactured homes) on dates specified by the municipality.

C. Definitions

No definitions currently exist in the *MGA* to reflect the proposed tax recovery process for mobile units (manufactured homes).

It is proposed that an interpretation section, containing definitions for "designated manufactured home," "manufactured home," "manufactured home community," "owner" and "register," be added to the MGA.

D. Individual Home Owners Assessable

The *MGA* currently allows a municipality to pass a bylaw making the owner of a mobile home park (manufactured home community), rather than the individual home owner, the assessed person for tax purposes.

Mobile homes (manufactured homes) located outside a mobile home park (manufactured home community) are treated like any other residential dwelling for assessment purposes.

It is proposed that section 304(1)(j)(ii) of the MGA be amended to remove the municipality's authority to pass a bylaw naming the manufactured home community owner as the assessed person for the park (community).

This proposed amendment would have the effect of making the individual owner the assessed person for tax purposes.

12 Supplementary Assessment Bylaw

The *MGA* currently specifies that, in preparing a supplementary assessment bylaw relating to mobile units (manufactured homes), the municipality can only refer to those units located in a mobile home park (manufactured home community).

This provision has created problems for municipalities when collecting taxes on units (homes) not located on such parks (communities).

It is proposed that section 313 of the MGA be amended to allow a municipality to prepare a supplementary assessment bylaw that applies to all mobile units (manufactured homes) situated in the municipality, not just those located in mobile home parks (manufactured home communities).

13 Supplementary Assessments For Movements During The Year

Currently, in the preparation of supplementary assessments, mobile units (manufactured homes) that are moved from one municipality to another can only be taxed for part of the year.

It is proposed that section 314(2)(c) be amended to add a notwithstanding provision which would allow for the preparation of a supplementary assessment of a mobile unit (manufactured home) that is moved into the municipality during the year.

This proposed amendment would allow each municipality to collect the taxes owing for that length of time the mobile unit (manufactured home) is occupied and located within the respective municipality.

14 *Specific Tax Bylaws For Monthly Payments*

Currently, the *MGA* enables a municipality to pass a property tax bylaw to allow taxes owing on a mobile unit (manufactured home) to be paid in installments.

However, if the property tax bylaw is not approved until April or May, the installment payments would not start until May or June, rather than in January as is currently the practice for other properties.

It is proposed that section 357 be amended to allow a municipality to pass a bylaw, separate from the property tax bylaw, that provides for compulsory property tax installment payments on mobile units (manufactured homes).

Proposed Amendments for 1998 to the Municipal Government Act
Comments Relating to Manufactured Homes

Respondent: _____

Representing: _____

10 Terminology Change

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11A Tax Recovery Process

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B Reporting Requirements

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C Definitions

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D Individual Home Owners Assessable

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12 Supplementary Assessment Bylaw

13 Supplementary Assessments for Movements During the Year

14 Specific Tax Bylaws for Monthly Payments


Proposed
Amendments
Relating to
Assessment and Taxation

15 Electricity Supply to Third Party Sellers

The *MGA* currently regulates gas supply obtained from direct sellers and allows the council of a municipality to enter into a tax agreement with an operator of a public utility which supplies fuel. No such provisions exist with respect to electricity.

The City of Calgary has requested an amendment to the *MGA* because a municipality does not have the ability to collect revenues on the value of the electricity being transported on behalf of a third party.

It is proposed that:

a) a new section be added for electricity equivalent to section 31 (which addresses regulation of a gas supply obtained from direct sellers through municipal distributors); and

b) section 360(4) be amended to add "or electricity" after the five references to "fuel".

16 Definition of Personal Property

The former *Municipal Taxation Act* specifically exempted personal property from assessment. The *MGA* defines property as a parcel of land, an improvement, or both, but it does not refer to personal property.

The Municipal Government Board (MGB) has heard several appeals as to whether certain property (such as furniture in motels and hotels, golf carts at golf courses, franchise fees in hotels or retail business, etc.) constitutes real property. As such, the MGB has requested a clarification.

It is proposed that:

a) to differentiate between real property and personal property, the reference to "property" in section 284(1)(r) be amended to read "real property";

b) section 298 be amended to include a definition of personal property. The proposed definition excludes real property (as defined in section 284(1)(r)), and includes, but is not limited to, goods, money, chattels,

furniture, merchandise, stocks, bonds, shares, franchise fees, software, and intangible property; and

c) ***a new provision be added stating that personal property of a commercial nature not be assessed.***

17 Access to Building Permit Information

Building permit information assists the assessor in preparing accurate assessments. The assessor is better able to prepare assessments by having improvement details before making an on-site inspection.

Prior to the enactment of the *Safety Codes Act* (SCA), assessors encountered very little difficulty in obtaining building permit information from a municipality. However, since its enactment assessors have experienced difficulties in accessing building permit information from accredited agencies under the SCA.

It is proposed that section 295 be amended to allow the municipality and its assessor to access building permit information held by an accredited agency hired by that municipality.

The proposed amendment was requested by municipalities and the assessment firms under contract to them.

18 Definition of Farm Land

In urban municipalities, farm buildings are taxed at non-residential rates rather than at farm land rates. The school tax rate for non-residential properties is higher than for other property types including farm land.

It is proposed that section 297(1)(c) be amended to include "farm buildings" within the definition of "farm land" when assigning assessment classes to property.

Staff of the Assessment Services Branch of Alberta Municipal Affairs have requested this amendment. The proposed amendment would result in farm land and farm buildings being treated similarly within urban municipalities.

19 *Definition of Rural Gas Distribution Systems*

The former *Municipal Taxation Act* exempted all pipeline property owned or operated by a rural gas cooperative. Under the *MGA*, all gas transmission lines are assessable regardless of ownership. Rural gas distribution systems owned by co-operatives continue to be exempt. However, gas distribution lines are not considered to be part of a gas distribution system.

A recent amendment to the *MGA* created a situation where it is uncertain whether transmission lines form part of a rural gas distribution system. Therefore, it is unclear whether gas transmission or conveyance pipelines owned by a municipality or a rural gas co-operative are exempt from assessment.

It is proposed that section 298(r) be amended by including "gas pipelines" in the definition of "rural gas distribution systems."

The proposed amendment was requested by the Federation of Alberta Gas Co-ops.

20 *Property Tax Bylaw Errors and Omissions*

The *MGA* prohibits a municipality from amending the tax rates set by the property tax bylaw after the tax notices are sent out to taxpayers. This provision prevents a municipality from correcting errors and omissions relating to tax rates.

Without a mechanism to correct an error after the notices have been mailed out, a municipality must carry through with collecting taxes based on erroneous rates.

It is proposed that section 354 be amended by adding a new subsection (5) which states that where a municipality discovers an error or omission in the property tax bylaw, it may apply to the Minister for corrective action.

This issue was raised by the Town of Bashaw.

21 Use of Allowance for Non-Collection of Taxes

The *MGA* allows a municipality to have an allowance for non-collection of requisition taxes. The legislation intends that municipalities use this allowance only to cover requisition taxes that are not collected. However, the manner in which some municipalities are applying this section appears to be inconsistent.

It is proposed that section 359 be amended to clarify that the allowance for uncollected requisition taxes can only be used to fund those requisitions that the allowance is established for.

This issue was raised by some concerned ratepayers.

22 Tax Agreements For Municipal Property

The *MGA* allows a municipality to enter into a tax agreement with an operator of a public utility or of linear property who occupies the municipality's property. The Act also requires the property that is subject to a tax agreement to remain assessable and be included in the equalized assessment. Therefore, this property is subject to the education levy.

A similar process for other municipal properties does not exist. The *Tax Agreement Regulation (Alberta Regulation 147/97)* was enacted to allow a municipality with a population over 100,000 to enter into tax agreements with an assessed person who occupies or manages municipal property (including municipal property held on the municipality's behalf by a non-profit organization) to accept an annual payment in place of taxes. The agreement does not relieve the municipality from the obligation to pay the provincial education levy. However, the agreement between the municipality and the other party can indicate how that amount is to be paid.

The *Regulation* was made under section 603, which requires that an amendment must be made to the *MGA* within two years of the *Regulation* coming into force to continue the substance of the matter.

It is proposed that:

a) a new section be added, similar to section 360, that would allow a municipality to enter into a tax agreement with an assessed person

who occupies or manages the municipality's property that would provide the municipality with a payment in place of tax; and

b) when a tax agreement is made, the assessment of the municipality's property be reflected in the equalized assessment prepared for that municipality.

The proposed amendment would provide greater flexibility for municipalities in dealing with certain property tax situations.

23 Remedial Costs Relating to Contaminated Tax Recovery Parcels

The *MGA* specifies in what order the proceeds from a public auction of tax arrears lands are to be distributed. The proceeds must first be used to pay any remedial costs relating to the parcel. Remedial costs are defined as "expenses incurred to perform work under an environmental protection order issued under the *Environmental Protection and Enhancement Act*." The intent of this provision was to identify remedial costs as expenses incurred by the Province, not a third party or landowner.

Alberta Environmental Protection has identified some concerns with the definition of "remedial costs." The definition does not identify who does the work. This could be interpreted to mean that a polluter in the first instance whose land ends up in tax recovery could recover expenses. In addition, the provision appears to be limited to expenses incurred for work only (i.e. undertakings or labor) and not all costs associated with the cleanup of the property.

It is proposed that section 410(c.1) be amended to define remedial costs as "all expenses incurred by the Province to perform work under an environmental protection order or an enforcement order issued under the Environmental Protection and Enhancement Act."

24 Collection of Rents to Pay Tax Arrears

Generally, property taxes on taxable land and improvements are payable by the landowner or the person holding a lease.

A number of municipalities have encountered problems where the property tax is outstanding on land that is leased from the Crown or a municipality, is part of a

railway right of way or station grounds, is part of an irrigation or drainage works, or is held from a regional airports authority. For these properties, the assessed person is the lease, licence, or permit holder, not the landowner.

If a lease (or licence or permit) holder's property taxes are in arrears, the municipality cannot take possession of the property. The *MGA* does not provide that any rents being paid to the lease holder be redirected to the municipality nor does it allow a caveat to be registered against the property. Suing for judgment is not an effective alternative means of collecting these taxes because it is a costly and lengthy exercise.

It is proposed that section 416 be amended to allow municipalities to collect or seize rents to recover unpaid property taxes owed by tenants of the Province, another municipality, a railroad, an irrigation or drainage district, or a regional airport authority.

For constitutional reasons, the proposed amendment does not cover any properties leased from the Crown in right of Canada.

25 Utility Liens on Title of Tax Recovery Lands

Under the *MGA*, a person who purchases tax recovery land at a public auction acquires the land free of all encumbrances except for the following:

- encumbrances arising from claims of the Crown in right of Canada;
- irrigation or drainage debentures;
- registered easements and instruments registered pursuant to section 72 of the *Land Titles Act*; and
- right of entry orders as defined in the *Surface Rights Act* registered under the *Land Titles Act*.

The specified exceptions do not include liens filed under the *Rural Utilities Act* (*RUA*) when the Province has guaranteed loans to rural utilities associations.

The *RUA* provisions take precedence over the *MGA* provisions. As a result, the liens in question are not removed from tax recovery land when it is sold or transferred to a municipality after 15 years. Municipalities have been advised of the situation but the sale of tax recovery land on which there is a lien remains a problem.

It is proposed that sections 423(1) and 428.2(4) be amended to refer to the liens under section 36 of the Rural Utilities Act.

The proposed amendment would remove any confusion as to the encumbrances that remain on tax recovery land but does not address the possible difficulty of selling such land when it is encumbered by a *RUA* lien. This issue was raised by the Municipal District of Mackenzie.

26 Adding Costs to the Tax Roll

The previous *MGA* specifically empowered a council to pass bylaws providing for the clearance of snow and ice from sidewalks after 24 hours. When the owner or occupant failed to pay the associated expenses for the clearance, the expenses could be charged against the property as a special assessment, to be recovered in the same manner as other taxes.

The current *MGA* provides a municipality with general authority to pass bylaws requiring owners to keep their sidewalks clear of snow and ice. The penalty for non-compliance can also be stipulated by bylaw. However, a council does not have the authority to add unpaid costs of sidewalk clearance to the tax roll. Any amount owed would have to be collected by civil action. A civil action to recover unpaid expenses could be time-consuming and costly.

It is proposed that section 553 be amended to include the unpaid costs of snow and ice removal from sidewalks as a specific expense that can be added to the tax roll of a parcel of land.

The Alberta Urban Municipalities Association has requested this proposed amendment on behalf of its members.

Proposed Amendments for 1998 to the Municipal Government Act
Comments Relating to Assessment and Taxation

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Representing: _____

15 Electricity Supply to Third Party Sellers

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16 Definition of Personal Property

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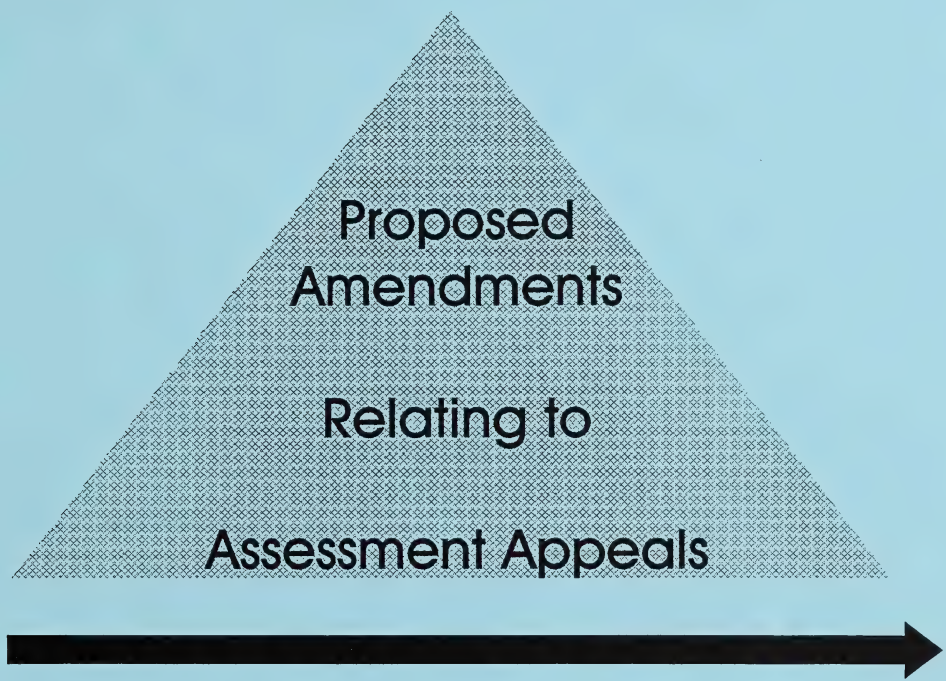
Proposed
Amendments
Relating to
Assessment Appeals

27 Composition of Assessment Review Boards (ARB)

The establishment of an ARB is addressed in the *MGA*. However, it is not specific as to how the board is to be structured and consequently allows the ARB to consist entirely of councillors.

Elsewhere in the *MGA*, councillors may not form the majority of a subdivision and development appeal board.

It is proposed that section 454 be amended to reflect the provisions in section 627 so that councillors do not form the majority of an ARB.

This proposed amendment would make the establishment of an ARB consistent with the establishment of a subdivision and development appeal board.

This matter was raised by some stakeholders.

28 Vary Minimum 14 Day Period

Both an assessment review board (ARB) and the Municipal Government Board (MGB) must provide at least 14 days notice of an assessment appeal hearing to the municipality, the complainant (in the case of an ARB) or the person who sent the written statement (in the case of the MGB), and any assessed person who is affected. There is no legislative authority to reduce that timeline.

The minimum 14 days notice provision has created inefficiencies in the MGB's procedures in instances where all parties are ready to proceed.

It is proposed that:

a) section 494 be amended to allow the MGB to vary the minimum 14 days notice provision with the consent of all parties concerned; and

b) section 462 be amended to provide a complementary amendment relating to assessment review boards.

This issue was raised by the MGB.

29 *Evidentiary Matters*

Appellants frequently do not submit all their evidence before an assessment review board (ARB) since a subsequent appeal to the Municipal Government Board (MGB) is available to them. As a result, the MGB currently has a considerable assessment appeal backlog.

The *Evidentiary Matters Regulation (Alberta Regulation 121/97)* was enacted to address the administrative difficulties the MGB is encountering. The *Regulation* ensures that all pertinent evidence is heard at the ARB level, rather than being introduced before the MGB. The *Regulation* was made under section 603 of the *MGA*, which requires that an amendment must be made to the *MGA* within two years of the *Regulation* coming into force to continue the substance of the matter.

It is proposed that:

a) ***section 464 be amended to require the parties to fully disclose all pertinent evidence to the ARB. and to require the ARB to keep a record of the minutes, evidence submitted to it during the hearing, and its decision.***

b) ***section 496 be amended to provide that, upon appeal, the MGB restrict its deliberations to that evidence considered by the ARB, and that if new evidence is presented to the MGB, the MGB must refuse to hear it or refer the appeal back to the ARB.***

Although the *Regulation* compels parties to fully disclose information to each other before the ARB hearing, the ARB is unable to enforce this information exchange.

It is proposed that section 454 be amended to include provisions similar to section 628 to require a municipality in its bylaw establishing an assessment review board to set out its procedures regarding appeals in that bylaw.

The bylaw could include, for example, that the parties must exchange information, documents, and a list of witnesses to be called and provide a copy of all that is being exchanged to the assessment review board within a specified time period.

30 Panel of One for Certain Municipal Government Board Hearings

A panel of the Municipal Government Board (MGB) must consist of three members. For hearings of a minor or routine nature, it would be more efficient to have a panel of one member.

It is proposed that section 487 be amended to allow the MGB to establish a panel of one subject to regulations established by the Minister.

The provisions of the regulation could include the following:

a) administrative matters such as agreed to assessor recommendations, scheduling of information exchanges and other similar procedural matters required to be addressed prior to the hearing on the merits of the application;

b) assessment appeals within a total assessed value, such as under $150,000;

c) assessment appeals that are of a certain class, such as single residential or farmland; and

d) appeals where the administrator of the board is satisfied a just and equitable decision can be reached by a panel of one.

In cases where the appeal becomes more complex than initially contemplated, it is proposed that the single panel member be allowed to defer to a panel of three.

The issue was raised by the MGB.

31 Who Can Appeal a Linear Assessment

The *MGA* is silent on who can appeal a linear assessment.

It is proposed that section 492 be amended to include provisions similar to section 470(2) so that it specifies who can make a complaint about linear property.

This issue was raised by the Municipal Government Board.

Proposed Amendments for 1998 to the Municipal Government Act
Comments Relating to Assessment Appeals

Respondent: _____

Representing: _____

27 Composition of Assessment Review Boards (ARB)

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28 Vary Minimum 14 Day Period

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29 Evidentiary Matters

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30 Panel of One for Certain Municipal Government Board Hearings

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31 Who Can Appeal a Linear Assessment

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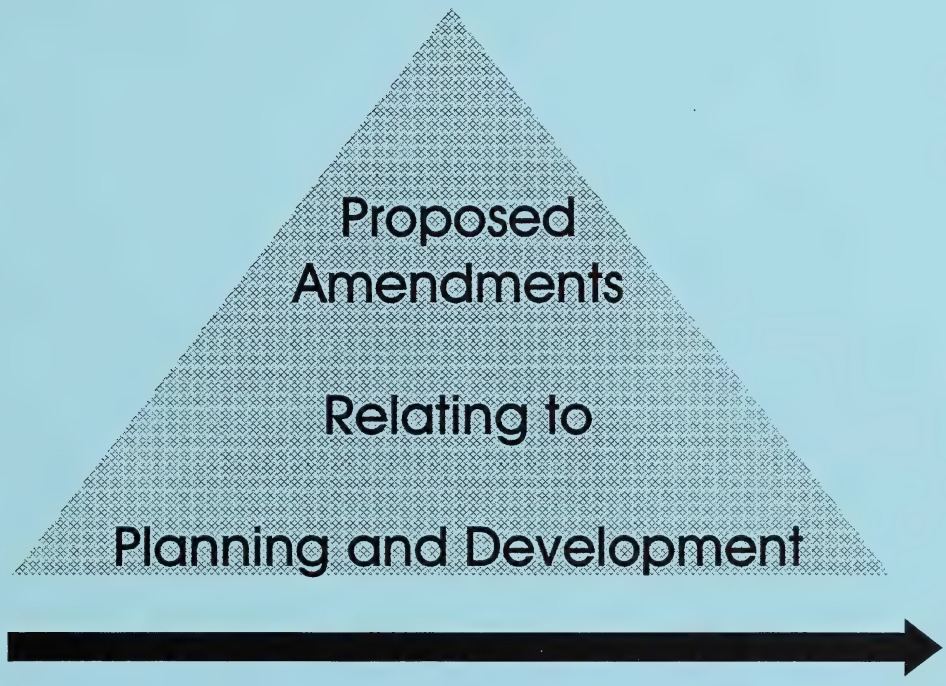
Proposed
Amendments
Relating to
Planning and Development

32 Mediation As A Prerequisite to Dispute Hearings

The *MGA* allows the Municipal Government Board (MGB) to hear certain disputes involving both municipalities and landowners. Specifically, these are:

- appeals pursuant to section 619;
- intermunicipal disputes; and
- disputed annexation applications.

In each of these situations the MGB is required to hold a formal hearing and to make a decision. Hearings are often time consuming and expensive. The decision may not completely satisfy the parties involved. Prior to the dispute being filed with the MGB, it would be advantageous to require all parties involved in a dispute to attempt a joint resolution of the particular dispute.

It is proposed that new provisions be added to require that a formal mediation process, or other dispute resolution processes, take place prior to any submission to the MGB in the case of intermunicipal disputes, appeals pursuant to section 619, and contested annexation applications.

A related amendment would require, in the case of intermunicipal disputes, that the outcome of the dispute resolution process would be the subject of a public hearing pursuant to section 692.

The issue was raised by Municipal Affairs.

33 Caveats For Environmental Reserve Easements

As part of the subdivision approval process, the MGA allows a subdivision authority, with the agreement of the landowner, to register a caveat giving the municipality an environmental reserve easement instead of providing the land as environmental reserve.

However, the Environmental Law Centre has noted that common law requirements for easements may prevail over the Act and could result in the caveat being subject to challenge and removal.

It is proposed that section 664 be amended to ensure that a caveat respecting an environmental reserve easement takes precedence over common law requirements for easements.

34 Regulation Regarding Placing Caveats Against Titles

The *MGA* allows the Lieutenant Governor in Council to make regulations respecting planning matters. There are specific instances where lands subject to subdivision and development have certain physical and environmental limitations that the buyer should be aware of.

Placing a caveat on the title would help resolve this situation. However, there is no authority to ensure that the caveat would not be discharged in these circumstances.

It is proposed to amend section 694 by adding a subsection (8) allowing the Lieutenant Governor in Council to make regulations where the Natural Resources Conservation Board, Energy Resources Conservation Board, or Alberta Energy and Utilities Board have approved a development, authorizing the registration of caveats on each title serving notice that the area is subject to a specific physical or environmental limitation and that the caveat shall not be discharged except by order of the court.

This issue was raised by staff of Municipal Affairs.

35 Municipal Liability Relating to Specific Development Limitations

Municipal liability is addressed in Part 13 but does not include matters relating to certain physical and environmental limitations that can affect subdivision and development. In 1992, the Natural Resources Conservation Board conditionally approved a development proposal for a major residential, recreational and tourism project. The development is unique in respect of the physical and environmental considerations involved with the area.

The *Canmore Exemption From Liability Regulation (Alberta Regulation 113/97)* was enacted to address this issue. The Regulation was made under section 603, which required that an amendment must be made to the *MGA* within two years of the *Regulation* coming into force to continue the substance of the matter.

It is proposed that Part 13 be amended to allow the Lieutenant Governor in Council to make regulations that apply to the Town of Canmore with respect to municipal liability and underground mining that relates to a decision that allows subdivision and development.

Proposed Amendments for 1998 to the Municipal Government Act
Comments Relating to Planning and Development

Respondent: _____

Representing: _____

32 Mediation as a Prerequisite to Dispute Hearings

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33 Caveats for Environmental Reserve Easements

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34 Regulation Regarding Placing Caveats Against Titles

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35 Municipal Liability Relating to Specific Development Limitations

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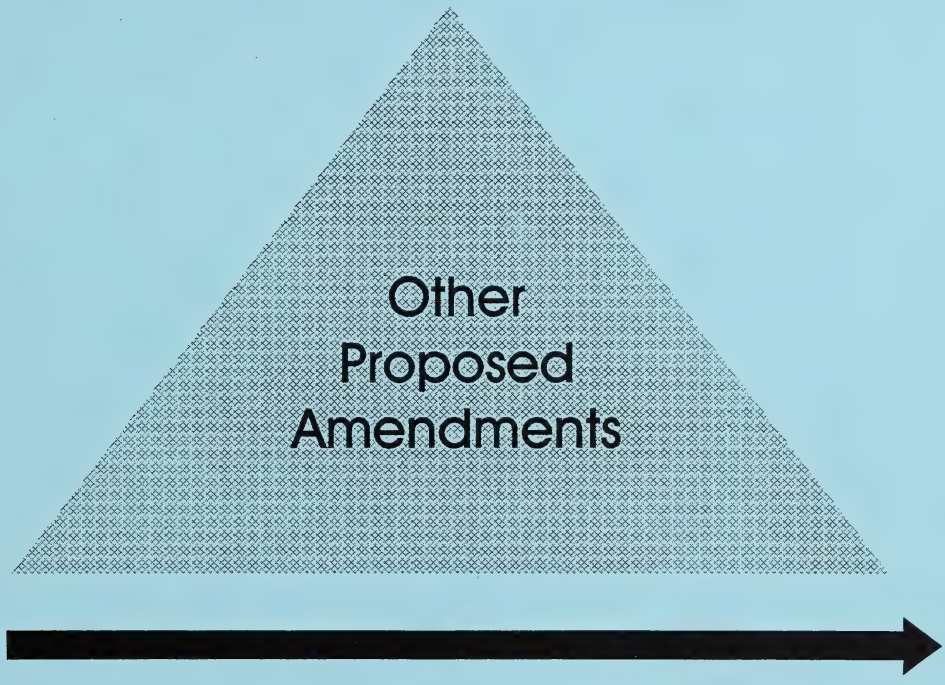
Other
Proposed
Amendments

36 *Providing the Minister With Copies of Information*

The *MGA* allows the Minister to direct a municipality to provide a copy of information or documents in the municipality's possession to the Minister. However, a similar provision does not exist with respect to regional services commissions.

It is proposed that a new section be added in Part 15.1 which would allow the Minister to direct that a regional services commission provide a copy of any document or other information in its possession to the Minister within the time specified and without charge.

The proposed amendment would allow the Minister to request information such as a certificate of insurance or statistical information relative to the commission's operation.

This issue was raised by Municipal Affairs.

37 *Application of The Freedom of Information and Protection of Privacy (FOIP) Act*

A. FOIP Paramountcy

Section 738 repeals those provisions of the *MGA* governing the disclosure of municipal and local authority information in favour of the *FOIP Act* upon the proclamation of section 1(1)(p)(vi) of that *Act*.

The *FOIP Amendment Act, 1997*, brings section 1(1)(p)(vi) of the original *FOIP Act* into force, and allows for the phased application of FOIP rules to municipalities, improvement districts and regional service commissions. However, when originally drafted, section 738 did not contemplate any such phase-in of FOIP rules.

It is proposed that section 738 be amended to reflect the paramountcy of section 1(1)(p)(vi) of the FOIP Act and the phased implementation of FOIP rules over local government bodies.

B. Information Request Deadlines

The *MGA* requires that a municipality respond to an information request within "a reasonable time," whereas the *FOIP Act* specifies a 30 day deadline.

It is proposed that section 217(4) be amended to reflect the FOIP timeframe of 30 days.

Proposed Amendments for 1998 to the Municipal Government Act
Comments Relating to Other Proposed Amendments

Respondent: _____

Representing: _____

36 Providing the Minister with Copies of Information

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37A FOIP Paramountcy

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B Information Request Deadlines

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Other Comments

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